IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3455 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VYOMESHGIRI SURAJGIRI GOSWAMI

Versus

JOINT CHARITY COMMISSIONER

Appearance:

MR SR PATEL for Petitioner

NS HANSA PUNANI, ld.AGP for Respondents No.1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 10/10/2001

ORAL JUDGEMENT

Heard learned Counsel. Rule. Ms.Hansa Punani, ld.AGP waives the service of Rule on behalf of respondent no.1. With the consent of the parties, this petition is finally heard today.

2. This petition is directed against the order passed by the Joint Charity Commissioner, Vadodara Division, Vadodara dated 31st January 1998 in Nyaya Misc.

Application No.60 of 1996 whereby the Joint Charity Commissioner directed the petitioner to deposit Rs.15,319.44ps. with interest at the rate of 12 per cent being the amount withdrawn by Chanchalben Surajgiri Gosai, mother of the petitioner from the Trust property.

3. Learned Counsel for the petitioner submits that the petitioner cannot be saddled with the liability to deposit the amount withdrawn by his mother.

4. There is no dispute to the fact that out of the amount of compensation, Rs.15,319.44ps. had been withdrawn by the mother of the petitioner without entering the same in the books of accounts of the Trust. Section 41A of the Bombay Public Trusts Act, 1950 authorises the Charity Commissioner to issue directions to any Trustee of a Public Trust or any person connected therewith to ensure that such Trust is properly administered and the income thereof is properly accounted for or duly appropriated. If such directions are given under sub-section (2), it is the duty of every such Trustee and person to comply with a direction issued to him. Therefore, it cannot be contended that the petitioner is not liable to pay the amount illegally withdrawn by his mother. I, therefore, see no merit in the contention advanced by the learned Counsel for the petitioner.

5. Learned Counsel for the petitioner submitted that the order directing the petitioner to pay the amount with interest at the rate of 12 per cent per annum from 1.1.1976 is too harsh and therefore, the rate of interest is to be reduced.

6. After hearing learned AGP appearing for the Joint Charity Commissioner and after considering the facts and circumstances of the case, especially when the petitioner has shown willingness to pay the amount as ordered by the Joint Charity Commissioner, I modify the impugned order to the extent that the petitioner shall pay Rs.15,319.44ps. with simple interest at the rate of 9 per cent per annum with effect from 1.1.1976 till the date of payment. The petitioner shall pay this amount within 30 (thirty) days from today to the Trust. The rest of the directions given by the Joint Charity Commissioner shall remain as they are. It is clarified that if the petitioner fails to deposit the amount within 30 days, the rest of the conditions stated in the order of the Joint Charity Commissioner shall apply. The petition is partly allowed to the aforesaid extent only. Rule is made absolute accordingly with no order as to

costs.

(K.R. Vyas, J.)

Sreeram.